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SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

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***Via Certified Mail
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August 18, 2015

Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resources Div.
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *California River Watch vs. Sonoma Valley County Sanitation District and
Sonoma County Water Agency*
U.S.D.C. Case No.: 3:15-cv-01283-WHO
Settlement Agreement and Mutual Release of Claims - August 17, 2015

Dear Citizen Suit Coordinator and Administrator McCarthy:

In compliance with 33 U.S.C. § 1365(c)(3), we enclose for review by the federal agencies a copy of the Settlement Agreement and Mutual Release of Claims entered into by the parties in resolution of the above-captioned matter.

Thank you for your consideration.

Sincerely,

Jerry Bernhaut
Counsel for California River Watch

JB:lhm
Enclosure
cc: David McFadden, Deputy County Counsel

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DEPT OF JUSTICE - ENRD
ENVIRONMENT DIVISION

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between California River Watch ("CRW"), the Sonoma Valley County Sanitation District, ("District"), and the Sonoma County Water Agency ("Agency") (collectively "the Parties") with respect to the following facts and objectives:

I. RECITALS

A. CRW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the rivers, creeks, and tributaries in California;

B. District is a county sanitation district organized under Division 5 of the California Health & Safety Code, § 4700 *et seq.* District owns the District sanitation facilities which are operated under a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to state order.

C. Agency operates the District's sanitation facilities pursuant to contract. Agency is formed pursuant to the Sonoma County Flood Control and Water Conservation District Act, Chapter 994 of the Statutes of 1949 (California Water Code Appendix § 53-1 *et seq.*), and is a separate legal entity from District. References to staff refer to Agency staff which conduct operations on behalf of District.

D. On January 15, 2015, CRW provided District and Agency with a Notice of Violation and Intent to File Suit ("Notice") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C 1365.

E. On March 19, 2015, CRW filed a Complaint in the United States District Court for the Northern District of California against District and Agency alleging certain violations specified in the Notice ("Complaint").

F. On June 10, 2015, the California Regional Water Quality Control Board, San Francisco Bay Region, adopted a negotiated Cease and Desist Order ("CDO") and on June 4, 2015 approved a negotiated Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("ACL") executed by the District, addressing alleged violations of the District concerning sanitary sewer overflows in the District's operating system and other alleged violations. The ACL includes, as a Supplemental Environmental Project, a Private Sewer Later Replacement Incentive Program in which the District has agreed to provide

\$50,000 in reimbursements for the inspection and repair and/or replacement of sewer laterals for single family residences.

G. On July 13, 2015, CRW served the Complaint on the District and Agency.

H. CRW, District and Agency through their authorized representatives and without either adjudication of CRW's claims or admission by District or Agency of any alleged violation or other wrongdoing, have chosen to resolve in full CRW's allegations in the 60 Day Notice and Complaint with respect to the facilities owned by District concerning the violations alleged therein against District and Agency through settlement and avoid the costs and uncertainties of further litigation. Although Agency is not a party to this Agreement, it has been named in CRW's Notice and Complaint and is, therefore, an express third party beneficiary of this Agreement.

I. CRW, District and Agency have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving CRW's allegations set forth in the Notice and Complaint against District and Agency, including without limitation, any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice and Complaint.

II. REMEDIAL MEASURES AND PROJECTS

A. Condition Assessment of Sewer Lines

1) District will conduct a condition assessment conducted by closed circuit television ("CCTV") and using the Pipeline Assessment and Certification Program ("PACP") ("Condition Assessment") for its collection system sewer mains which are within 200 feet of Agua Caliente Creek, Fryer Creek, Nathanson Creek and Sonoma Creek, within 2 years after the Effective Date of this Agreement ("Effective Date"), except for sewer mains which have been assessed pursuant to CCTV or similar method within the past 10 years of the Effective Date.

2) District will conduct a Condition Assessment for all other collection system sewer mains not covered in subparagraph A.1) above within 7 years of the Effective Date, except for sewer mains which have been assessed pursuant to CCTV or similar method within the past 10 years of the Effective Date.

B. Sewer Line Repair/Replacement

1) With the exception of Force Majeure as specified below, District will repair or replace sewer mains in its collection system within 200 feet of the creeks listed in subparagraph A.1) above as follows:

- a) For sewer mains with a PACP rating of 5, within 2 years of a rating determination, or within 2 years after the Effective Date, whichever is later;
- b) For sewer mains with a PACP rating of 4, within 5 years of a rating determination, or within 5 years after the Effective Date, whichever is later.

2) With the exception of Force Majeure as specified below, District will repair or replace the remaining sewer mains in its collection system not addressed in subparagraph B.1) above as follows:

- a) For sewer mains with a PACP rating of 5, within 2 years of a rating determination, or within 2 years after the Effective Date, whichever is later;
- b) For sewer mains with a PACP rating of 4, within 5 years of a rating determination, or within 5 years after the Effective Date, whichever is later.

C. Sanitary Sewer Overflow Reporting and Response

1) For sanitary sewer overflows ("SSO's") which occur from the District's collection system after the Effective Date:

- a) District will include in the California Integrated Water Quality System ("CIWQS") reports for each spill the method used to calculate the spill volume, the volume recovered, and the volume reaching surface waters;
- b) For SSO's of 1000 gallons or greater which reach surface water (e.g., stream or creek) during a non-storm related period (i.e., any time of year when the spill is not related to a storm event), and there is sufficient water in the stream/creek to conduct the sampling:

- i. District will sample the surface water upstream and downstream of the point of discharge for the following parameters: Ammonia as N, Fecal Coliform, Total Coliform and Dissolved Oxygen;
- ii If any of the parameters in subparagraph c.1)b)i. above are found at higher levels in the downstream sample than in the upstream sample, District will determine and address the cause of the SSO, and employ the following measures to prevent future overflows:
 - spot repair or pipe replacement of any structural defect in a sewer pipe;
 - if the cause is non-structural, such as blockage or vandalism, perform additional maintenance or cleaning or other appropriate measures.
- iii. The District will engage a wildlife biologist to prepare a protocol for evaluating the impact on the receiving water of a spill subject to this paragraph, and whether any corrective action should be taken. The protocol shall be provided to CRW for review and comment within sixty (60) days after the effective date of this Agreement. The protocol shall be incorporated into the District's Standard Operating Procedure.

2) Within thirty (30) days after the Effective Date, District will prepare or revise the Standard Operating Procedure for responding to spills that will address positioning of staff, prioritizing response when smart lids indicate rising water at multiple locations. The Standard Operating Procedure will be revised to include the protocol prepared pursuant to Paragraph II.C.1)iii above once it is finalized.

3) Within thirty (30) days after the Effective Date, District will formally incorporate the direct observation method (known also as the San Diego Method Array) into its Sewer System Response and Notification Plan.

4) Within thirty (30) days after the Effective Date, District will put a link on its website to the CIWQS Public Reports website, and request the City of Sonoma to add a link to its website to the Agency's website

regarding sewer spills and/or to the 24 hour number regarding spills in the public right of way.

D. Private Sewer Lateral Program/Ordinance

1. By July 1, 2016 District shall undertake the following tasks regarding a private sewer lateral regulatory program/ordinance for consideration by the District's Board for adoption.

- a) Staff will develop a proposal for the regulation of single family residential private sewer laterals in the District service area which connect to the public sewer.
 - 1) The proposal will include the requirement for inspection by the property owner of the private sewer lateral and repair or replacement as necessary by the property owner on the occurrence of one of the following two triggering events at a minimum: i) upon property transfer; or ii) or upon replacement or rehabilitation by the District of the main line connected to the lateral.
 - 2) inspection will not be required for the following transfer of properties:
 - i) trust transfers, intra-family transfers, and transfers via inheritance;
 - ii) transfers of property in which the sewer laterals were constructed less than 10 years prior to the date of transfer of the property;
 - iii) transfers of property in which the laterals have been inspected less than 5 years prior to the date of transfer and no damage or wear requiring repair was found;
- b) The proposal and any public workshop materials shall be provided to CRW for review and comment. CRW shall return any comments it may have on the proposal in writing within twenty-one (21) days of submittal by District.

- c) Staff shall conduct at least one public workshop or meeting in the District's service area regarding the proposed private sewer lateral regulation in order to receive public input and comment. As part of the workshop/meeting, District will consider whether additional issues (e.g., financial hardship) will need to be addressed in the ordinance.
- d) After receiving public input and comment, District shall present a final proposal to the District's Board along with any public comment, and staff response and analysis for the Board's consideration at a publicly held meeting or meetings.

2. If the District's Board does not adopt a private sewer lateral ordinance by July 1, 2016, District agrees to include an additional \$50,000 in the rebate program specified in the ACL adopted by the Regional Board on June 4, 2015. Such additional money will not be subject to the expenditure deadline specified in the ACL, and shall be available for reimbursement pursuant to the rebate program until it is expended.

VI. SETTLEMENT AND RELEASE OF CLAIMS

A. Upon approval and entry of this Settlement Agreement, CRW, on behalf of itself, its officers, members, agents, successors and assigns, and any other person or organization acting under the direction or control of CRW, its officers, members, agents, successors and assigns, agrees that it releases and forever discharges the District and the Agency, their officials, officers, employees, agents, successors and assigns, and any other person acting on the District's or the Agency's behalf with respect to the matters alleged in the Notice and the Complaint, as well any claims, known or unknown, which could have been asserted in the present litigation or against the District or Agency.

B. The term of this Agreement shall be 7 and one half years from the Effective Date. For the period beginning on the Effective Date and ending seven and one half (7 and 1/2) years after the Effective Date, neither CRW, its officers, staff, members, agents, successors and assigns, nor any organization under the control of CRW, its officers, staff, members, agents, successors and assigns will file any lawsuit against the District or Agency or the County of Sonoma seeking relief for alleged violation of the Clean Water Act or Porter-Cologne Act or violation of current or future NPDES or state waste discharge requirements permits for the sanitation facilities owned by the District. CRW further agrees that CRW will not support other lawsuits, by providing financial or legal assistance, personnel time or other affirmative actions, against the District or

Agency that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the District's Agency's compliance with the Clean Water Act or current or future NPDES permits regarding the District's facilities. The foregoing shall not prevent CRW from commenting at administrative proceedings or pursuing administrative challenges of permits issued to any Party.

C. CRW, on behalf of itself, its officers, members, agents, successors and assigns, and any other person under its direction and control, hereby waives the application of Section 1542 of the California Civil Code (and any similar federal provisions), which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected the settlement with the debtor." NCRW understands and acknowledges the significance and consequence of this waiver and agrees that it intends these consequences even as to claims for injunctive relief, penalties or damages that may exist as of the effective date of this Settlement Agreement, but which it does not know exist, and which, if known, would materially affect its decision to execute this release, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

D. The releases set forth in this Settlement Agreement are not conditioned upon timely compliance by the District with any payment and other obligations of this Settlement Agreement, and CRW, its officers, staff, members, agents, successors and assigns, and any organization under the control of CRW, its officers, staff, members, agents, successors and assigns, agrees that its exclusive remedies for a breach of this Settlement Agreement by the District shall be suit in the state or federal court with jurisdiction over this matter for specific performance of this Agreement and/or any other remedies available under law. The Parties' sole remedy against the other during the period specified in Paragraph VI. B. above shall be limited to enforcement of this Settlement Agreement pursuant to Article VIII of this Agreement.

E. CRW agrees that it shall not provide information or documents previously provided to CRW by the District or Agency during the negotiations of this matter to any third person or organization, notwithstanding that some or all of the documents provided may be public records otherwise subject to public disclosure.

F. CRW shall initiate the process to request a dismissal, with prejudice, of the Complaint, including providing notice as required by CWA Sec. 505(c)(3), to the Attorney General and the Administrator. A request for dismissal with prejudice will only be filed after the United States has either completed its review of this Agreement or the forty-five day review period has expired, whichever occurs first.

G. Neither this Settlement Agreement nor the action taken hereunder shall constitute an admission by the District or Agency of the validity of any legal or factual position asserted by CRW, nor of the existence of any violation of the Clean Water Act or any rule or regulation promulgated thereunder, nor of any violation of any applicable California law, rule or regulation regarding any of the matters referenced in this Settlement Agreement.

VII. FORCE MAJEURE

A. Separate from, and in addition to any other limitations on the District's obligations under this Settlement Agreement, the obligations to comply with one or more of the provisions of this Settlement Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstances beyond the reasonable control of the District or any entity controlled by the District, including its contractors, and that could not have been reasonably foreseen and prevented by the exercise of due diligence by the District. Delays due to not receiving on a timely basis permission from land owners or obtaining necessary property rights pursuant to eminent domain, or abnormal inclement weather shall be considered to be circumstances beyond the District's control. Delays due to the District's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits shall not be considered to be circumstances beyond the District's control.

B. If any event or circumstance occurs that causes or may cause a delay in the District's compliance with any provision of this Agreement, and the District seeks relief under this section:

1. The District shall provide written notice to CRW within sixty (60) days of the date that the District first knew of the event or circumstance, or should have known of the event or circumstance by the exercise of due diligence;

2. The District's notice to CRW shall specifically refer to this section of this Agreement and describe the anticipated length of time the delay may persist, the cause of causes of the delay, the measures taken or to be taken by the District to prevent or minimize the delay, the schedule by which the measures will

be implemented, and the anticipated date of compliance. The District shall adopt all reasonable measures to avoid and minimize such delays;

3. If CRW disagrees with the District's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that avoiding the delay was reasonable under the circumstances. If the Parties fail to reach agreement, either party may invoke the Enforcement and Dispute Resolution procedures herein.

VIII. ENFORCEMENT AND DISPUTE RESOLUTION

A. The Parties covenant and agree that, if either party determines the other is in violation of one or more terms of this Agreement, the party shall provide notice to the other in writing of what actions or inactions are deemed to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional sixty (60) days, the Parties will meet and informally resolve their dispute. If the Parties cannot informally resolve the dispute, they shall first attempt to resolve such dispute through mediation, using a mutually agreed-upon mediator for resolution. The parties shall bear their own costs and pay equally for the mediator. Should mediation be unsuccessful, then the Parties will enter into binding arbitration, conducted by an arbitrator agreed to by the Parties. Either party may request that the presiding Judge of the Sonoma County Superior Court select an arbitrator if the Parties cannot reach agreement. The arbitration shall be binding and not subject to appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure Sections 1280, *et seq.* The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS/Endispute or other conventional rules agreed to by the Parties. The arbitrator shall be empowered to determine if there is a prevailing party and if so award payment of reasonable attorneys' fees and costs (including the arbitrator's fees), or portion thereof to that party as the arbitrator so determines. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs and can order each party to bear its own costs. Otherwise, the Parties shall each bear their own costs and attorney's fees in connection with the arbitration. The Parties agree that the processes of mediation and arbitration must advance as quickly as possible.

B. If River Watch asserts that the District is in violation of this Agreement, and the District corrects the action or inaction within sixty (60) days of written notice from River Watch describing the asserted violations, no further

enforcement action under the terms of this Agreement, including the dispute resolution process described above, shall be taken by either party.

IX. ATTORNEYS' FEES AND COSTS

A. Within thirty (30) days of the entry and approval of this Settlement Agreement, the Districts shall pay CRW the sum of **\$50,000** in full satisfaction of all claims by CRW for attorney's fees and costs incurred in this action or that could have been claimed in connection with CRW's allegations in the Notice and Complaint. The check or warrant shall be made payable to California River Watch.

B. Except as stated in paragraph VIII.A. above, each Party shall bear its own attorney's fees, costs and expenses.

C. In the event the payment required under paragraph VIII.A above, is not tendered in a timely fashion, CRW may seek enforcement of this provision directly without recourse to paragraph VI.D, above.

X. GENERAL PROVISIONS

A. Notifications: All reports, notices or other written communications required under this Settlement Agreement shall be sent to the respective parties at the following addresses:

1. District/Agency:

Grant Davis, General Manager
Sonoma County Water Agency
404 Aviation Blvd
Santa Rosa, CA 95403
Phone: (707) 547-1900
Fax: (707) 544-6123

2. CRW:

California River Watch
290 S. Main Street, #817
Sebastopol, CA 95472

And:

Jerry Bernhaut, Esq.
Law Office of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402-5469
Phone:(707) 528-8175
Email: j3bernhaut@gmail.com:

B. Government Functions of Agency; No Joint Venture or Third Party Liability: In entering into this Agreement the District shall be deemed to be exercising discretionary governmental functions and responsibilities for public purposes, and nothing in this agreement is intended to circumscribe the proper exercise of discretion by the District in its performance of this agreement and otherwise. Nothing in this Agreement nor any of the actions by the Districts pursuant to this Agreement shall be construed as creating a joint venture or other active involvement by the District with CRW or any other organization, entity or governmental agency which would give rise to a claim by any third party against the District for injury or damages arising out of the activities of CRW or any other organization, entity or governmental agency.

C. Severability: In the event any interpretation of a provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be deemed deleted, and the remainder of this Agreement shall be construed to be in full force and effect.

D. Effective Date: This Agreement shall be effective on the Date it is signed by the District ("Effective Date").

IT IS SO AGREED AND STIPULATED:

Dated: 5/17, 2015 California River Watch

By: 

Larry Hanson
Board Member

Dated: 8/12/15, 2015 Sonoma Valley County Sanitation District

By: 

Grant Davis
General Manager
Sonoma County Water Agency
On behalf of Sonoma Valley
County Sanitation District

APPROVED AS TO FORM:

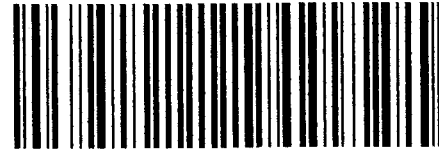
Dated: Aug 17, 2015 By: Jerry Bernhaut
Jerry Bernhaut, Esq.
Attorney for California River Watch

Dated: 8/14/, 2015 By: David McFadden
David McFadden
Deputy County Counsel
Attorney for District

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